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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BANK OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BANA HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP,

Plaintiff,

vs.

DESERT PINE VILLAS HOMEOWNERS
ASSOCIATION; SFR INVESTMENTS POOL
1, LLC; and ALESSI & KOENIG, LLC,

Defendants.

SFR INVESTMENTS POOL 1, LLC,

Counter/Cross Claimant,

vs.

BANK OF AMERICA, N.A., SUCCESSOR BY
MERGER TO BANA HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP; and JANET
ROBITAILLE, an individual,

Counter/Cross Defendants.

Case No.: 2:16-cv-00725-JCM-NJK

**STIPULATION AND PROTECTIVE
ORDER**

as amended on
page 9

Subject to the approval of the Court, Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (**BANA**), Desert Pine Villas Homeowners Association, SFR Investments Pool 1, LLC, and Alessi & Koenig, by and through their attorneys of record, stipulate to the following Protective Order:

1 To expedite the flow of discovery, facilitate the prompt resolution of disputes over
2 confidentiality, adequately protect material claimed to be confidential, and ensure protection is
3 afforded only to material so designated, it is, pursuant to the Court's authority under Federal Rule of
4 Civil Procedure 26(c), **ORDERED** this Protective Order shall govern the disclosure, handling and
5 disposition of documents in this litigation as follows:

6 1. **Application.**

7 1.1 This Protective Order shall govern any document, information or other
8 material that is designated as containing "Confidential Information" as defined herein, and is
9 produced in connection with this litigation by any person or entity (the **producing party**), whether
10 in response to a discovery request, subpoena or otherwise, to any other person or entity (the
11 **receiving party**) regardless of whether the person or entity producing or receiving such information
12 is a party to this litigation.

13 2. **Definitions.**

14 2.1 Confidential Information. "Confidential Information" shall mean and include,
15 without limitation, any non-public information that concerns or relates to the following areas:
16 confidential proprietary information, trade secrets, practices and procedures, personal financial
17 information, commercial, financial, pricing, budgeting, and/or accounting information, information
18 about existing and potential customers, marketing studies, performance projections, business
19 strategies, decisions and/or negotiations, personnel compensation, evaluations and other employment
20 information, and confidential proprietary information about affiliates, parents, subsidiaries and third-
21 parties with whom the parties to this action have or have had business relationships.

22 2.2 Documents. As used herein, the term "documents" includes all writings,
23 records, files, drawings, graphs, charts, photographs, e-mails, video tapes, audio tapes, compact
24 discs, electronic messages, other data compilations from which information can be obtained and
25 other tangible things subject to production under the Federal Rules of Civil Procedure.

26 3. **Initial Designation.**

27 3.1 Good Faith Claims. Claims of confidentiality will be made only with respect
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1 to documents, other tangible things and information that the asserting party has a good faith belief
2 are within the definition set forth in subparagraph 2.1 of this Protective Order. Objections to such
3 claims made pursuant to paragraph 5, below, shall also be made only in good faith.

4 3.2 Produced Documents. A party producing documents that it believes constitute
5 or contain Confidential Information shall state that the material is being produced under this
6 Protective Order by describing the documents or materials to be treated as confidential in writing, by
7 page or bates number wherever possible and/or shall produce copies bearing a label that contains or
8 includes language substantially identical to the following:

9 **CONFIDENTIAL**

10 This label shall be affixed in a manner that does not obliterate or obscure the contents of the
11 copies. If any person or party makes copies of documents designated as containing Confidential
12 Information, the copying person or party shall mark each such copy as containing Confidential
13 Information in the same form as the Confidentiality notice on the original document.

14 A party producing documents that are stored on electronic, magnetic, optical or other non-
15 paper media, such as compact discs, DVDs, video tapes and audio tapes (collectively, "data storage
16 devices") shall designate the data storage device as containing Confidential Information, by affixing
17 a label or stamp to the data storage device in the manner described above at the time copies of such
18 data storage devices are produced. If the receiving party or other persons or entities to whom
19 disclosure is authorized pursuant to subparagraph 7.1 make a copy of any data storage device
20 designated by the producing party as containing Confidential Information, the receiving party or
21 other authorized person shall mark each such copy as containing Confidential Information in the
22 same form as the confidentiality notice on the original data storage device produced. If the receiving
23 party or other authorized person prints out or otherwise makes copies of the documents or
24 information stored on such data storage device, the receiving party or other authorized person shall
25 mark each page so copied with the label or stamp specified in subparagraph 3.2.

26 3.3 Interrogatory Answers. If a party answering an interrogatory or other
27 discovery demand believes that its answer contains Confidential Information, it shall state so in the
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1 interrogatory response, and that portion of the response will be entitled to the protections of this
2 order.

3 3.4 Inspection of Documents. In the event a party elects to produce files and
4 records for inspection and the requesting party elects to inspect them, no designation of Confidential
5 Information needs to be made in advance of the inspection. For purposes of such inspection, all
6 material produced shall be considered as Confidential Information. If the inspecting party selects
7 specified documents to be copied, the producing party shall designate Confidential Information in
8 accordance with subparagraph 3.2 at the time the copies are produced.

9 3.5 Deposition Transcripts. The party asserting confidentiality shall state on the
10 record the portions it deems confidential. The failure to designate testimony on the record as
11 confidential shall be a waiver unless the designating party notifies all other parties and files a motion
12 to designate the testimony as confidential within 5 days of the notification.

13 3.6 Inadvertent Failure to Designate. Inadvertent failure to identify documents or
14 things as "Confidential" pursuant to this Protective Order shall not constitute a waiver of any
15 otherwise valid claim for protection, provided that the provisions of this paragraph are satisfied. If
16 the designating party discovers that information should have but was not designated "Confidential"
17 or of the designating party receives notice that would enable the designated party to learn that it has
18 disclosed such information, the designating party must immediately notify all other parties. In such
19 event, within thirty (30) days of notifying all other parties, the designating parties must also provide
20 copies of the "Confidential" information designated in accordance with this Protective Order. After
21 receipt of such re-designated information, the "Confidential" information shall be treated as required
22 by this Protective Order, and the receiving party(ies) shall promptly, and in no event more than
23 fourteen (14) calendar days from the receipt of the re-designated information, return to the
24 designated party all previously produced copies of the same unlegended documents or things. The
25 designating party and the parties may agree to alternative means. The receiving party(ies) shall
26 receive no liability, under this Protective Order or otherwise, for any disclosure of information
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1 contained in unlegended documents or things occurring before the receiving party was placed on
2 notice of the designating party's claims of confidentiality.

3 4. **Designations by Another Party.**

4 4.1 Notification of Designation. If a party other than the producing party believes
5 that a producing party has produced a document that contains or constitutes Confidential Information
6 of the non-producing party, the non-producing party may designate the document as Confidential
7 Information by so notifying all parties in writing within fourteen (14) days of service of the
8 document.

9 4.2 Return of Documents; Non-disclosure. Whenever a party other than the
10 producing party designates a document produced by a producing party as Confidential Information
11 in accordance with subparagraph 4.1, each party receiving the document shall either add the
12 Confidential Information designation in accordance with subparagraph 3.2 or substitute a copy of the
13 document bearing such designation for each copy of the document produced by the producing party.
14 Each party shall destroy all undesignated copies of the document or return those copies to the
15 producing party, at the direction of the producing party. No party shall disclose a produced
16 document to any person, other than the persons authorized to receive Confidential Information under
17 subparagraph 7.1, until after the expiration of the fourteen (14) day designation period specified in
18 subparagraph 4.1. If during the fourteen (14) day designation period a party discloses a produced
19 document to a person authorized to receive Confidential Information under subparagraph 7.1, and
20 that document is subsequently designated as Confidential Information in accordance with
21 subparagraph 4.1, the disclosing party shall cause all copies of the document to be destroyed or
22 returned to the producing party, at the direction of the producing party. The party may thereafter
23 disclose a copy of the document that has been marked as Confidential Information by the
24 designating party, in accordance with subparagraphs 3.2 and 7.1.

25 5. **Objections to Designations.** Any party objecting to a designation of Confidential
26 Information, including objections to portions of designations of multi-page documents, shall notify
27 the designating party and all other parties of the objection in writing up to and through trial of the
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1 matter. This notice must specifically identify each document that the objecting party in good faith
2 believes should not be designated as Confidential Information and provide a brief statement of the
3 grounds for such belief. In accordance with the Federal Rules of Civil Procedure governing
4 discovery disputes, the objecting and the designating parties thereafter shall confer within ten (10)
5 days after the date of such objection in an attempt to resolve their differences. If the parties are
6 unable to resolve their differences, the objecting party shall have twenty one (21) days after the
7 conference concludes to file with the Court a motion to remove the Confidential Information. If an
8 objection is served within forty-two (42) days of trial, the objecting party must file its motion to
9 remove the Confidential Information designation within half of the remaining time before trial, and
10 the meet-and-confer period shall be shortened accordingly. Where a party authored, created, owns,
11 or controls a document, information or other material that another party designates as Confidential
12 Information, the party that authored, created, owns, or controls the Confidential Information may so
13 inform the objecting party and thereafter shall also be considered a designating party for purposes of
14 this paragraph.

15 All documents, information and other materials initially designated as Confidential
16 Information shall be treated as such in accordance with this Protective Order unless and until the
17 Court rules otherwise, except for deposition transcripts and exhibits initially considered as
18 containing Confidential Information under subparagraph 3.5, which will lose their confidential status
19 after twenty-one (21) days unless so designated as Confidential Information. If the Court rules that a
20 designation should not be maintained as to a particular document, the producing party shall, upon
21 written request by a party, provide that party a copy of that document without the designation
22 described in subparagraph 3.2.

23 If an objecting party elects not to make such a motion with respect to documents within
24 twenty one (21) days after the conference, information or other materials to which an objection has
25 been made, the objection shall be deemed withdrawn. The designating party shall have twenty one
26 (21) days to respond to the objecting party's motion. If no response is filed by the designating party
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1 within twenty one (21) days, the designating party shall be deemed to have consented to the
2 objecting party's motion pursuant to LR 7-2(d).

3 6. **Custody.** All Confidential Information and any and all copies, extracts and
4 summaries thereof, including memoranda relating thereto, shall be retained by the receiving party in
5 the custody of counsel of record, or by persons to whom disclosure is authorized under subparagraph
6 7.1.

7 7. **Handling Prior to Trial.**

8 7.1 Authorized Disclosures. Confidential Information shall be disclosed by the
9 receiving party only to the following persons:

- 10 a. Counsel for the parties in this litigation, including their associates,
11 clerks, paralegals, and secretarial personnel;
- 12 b. Qualified persons taking testimony in this litigation involving such
13 Confidential Information, and necessary stenographic, videotape and
14 clerical personnel;
- 15 c. Experts and their staff who are retained by counsel as expert witnesses
16 for a party in this litigation;
- 17 d. Experts and their staff who are consulted by counsel for a party in this
18 litigation;
- 19 e. Parties to this litigation, limited to the named party and, if that party is
20 a corporate entity, a limited number of employees of the corporate
21 entity and its insurers;
- 22 f. Designated in-house counsel and a limited number of assistants,
23 administrative or otherwise;
- 24 g. Outside vendors employed by counsel for copying, scanning and
25 general handling of documents;
- 26 h. Any person of whom testimony is taken regarding the Confidential
27 Information, except that such person may only be shown Confidential
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1 Information during his/her testimony, and may not retain a copy of
2 such Confidential Information; and

- 3 i. This Court and this Court's staff, subject to the Court's processes for
4 filing materials under seal.

5 Such disclosures are authorized only to the extent necessary to investigate, prosecute, or
6 defend the litigation.

7 Confidential Information may not be disclosed to persons under subparagraphs (c) or (d)
8 until the receiving party has obtained a written acknowledgment from the person receiving
9 Confidential Information, in the form of the Declaration attached hereto as Exhibit A, that he or she
10 has received a copy of this Protective Order and has agreed to be bound by it. A party who discloses
11 Confidential Information in accordance with subparagraph 7.1 shall retain the written
12 acknowledgment from each person receiving Confidential Information, shall maintain a list of all
13 persons to whom a receiving party has disclosed Confidential Information and identify what
14 documents have been disclosed, and shall furnish the written acknowledgments and disclosure list to
15 opposing counsel as follows: (i) for a person under subparagraph (c), within thirty (30) days after the
16 person signs the Declaration; and (ii) for a person under subparagraph (d), within thirty (30) days
17 after the matter is finally concluded. Disclosure of Confidential Information to this Court, including
18 judicial staff, shall be made in accordance with subparagraph 7.4 of this Protective Order.

19 7.2 Unauthorized Disclosures. All persons receiving Confidential Information
20 under the terms of this Protective Order are under the jurisdiction of the state courts and U.S. federal
21 courts located in Nevada for all matters arising from the improper disclosure or use of such
22 information. If Confidential Information is disclosed to any person other than in the manner
23 authorized by this Protective Order, the party or person responsible for the disclosure, and any other
24 party or person who is subject to this Protective Order and learns of such disclosure, shall
25 immediately bring such disclosure to the attention of the designating party. Without prejudice to
26 other rights and remedies of the designating party, the responsible party or person shall make every
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1 effort to obtain and return the Confidential Information and to prevent further disclosure on its own
2 part or on the part of the person who was the unauthorized recipient of such information.

3 ~~7.3 Court Filings. In the event any Confidential Information must be filed with the~~
4 ~~Court prior to trial, the proposed filing shall be accompanied by a motion to file the Confidential~~
5 ~~Information under seal that complies with Local Rule 10-5(b) and a proposed order, and the~~
6 ~~application and proposed order shall be directed to the judge to whom the Confidential Information~~
7 ~~is directed. This provision is applicable to briefs, memoranda, and other filings which quote,~~
8 ~~summarize, or describe Confidential Information.~~ see order issued concurrently
herewith

9 8. **Care in Storage.** Any person in possession of Confidential Information produced by
10 another party shall exercise reasonable and appropriate care with regard to the storage, custody,
11 copying, and use of such information to ensure that the confidential and sensitive nature of same is
12 maintained.

13 9. **Handling During Trial.** Confidential Information that is subject to this Order may be
14 marked and used as trial exhibits by either party, subject to terms and conditions as imposed by the
15 Court upon application by any party.

16 10. **No Implied Waivers.** This Protective Order shall not be interpreted as a waiver of
17 the right to object, under applicable law, to the furnishing of information in response to discovery
18 requests or to object to a requested inspection of documents or facilities. Parties producing
19 Confidential Information in this litigation are doing so only pursuant to the terms of this Protective
20 Order. The taking of any action in accordance with the provisions of this Protective Order shall not
21 be interpreted as a waiver of any claim or position or defense in this action, or any other actions.

22 11. **No Admission.** The designation of any item as Confidential Information shall not be
23 construed as an admission that such material, or any testimony concerning such material, would be
24 admissible in evidence in this litigation or in any other proceeding.

25 12. **Inadvertent Disclosure.** Nothing in this Protective Order abridges applicable law
26 concerning inadvertent disclosure of a document that the Disclosing Party believes contains
27 attorney-client communications, attorney work product, or otherwise privileged information. If a
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1 party inadvertently discloses documents or information subject to a claim of privilege or work
2 product protection, such disclosure will not waive otherwise applicable claims of privilege or work
3 product protection under applicable law. Upon discovery by the Receiving Party, or receipt of
4 written notice from the Disclosing Party identifying privileged or protected Documents that were
5 inadvertently produced, the receiving party shall within seven (7) business days either: (a) return or
6 certify the destruction of all such documents, all copies, and any work product or portions of any
7 work product containing or reflecting the contents of the subject materials; or (b) after attempting to
8 resolve any dispute with opposing counsel informally, file a motion to challenge the assertion of
9 privilege and tender the subject documents for *in camera* review with the motion. The moving party
10 shall do nothing to compromise the privilege claim until the Court rules on said motion and the
11 opportunity for appellate review is exhausted or the issue is otherwise resolved.

12 13. **Parties' Own Documents.** This Protective Order shall in no way restrict the parties
13 in their use of their own documents and information, and nothing in this Protective Order shall
14 preclude any party from voluntarily disclosing its own documents or information to any party or
15 nonparty.

16 14. **Motion by Third Party to Compel Production of Confidential Information.** If any
17 third party subpoenas Confidential Information from a party to this action or moves to compel a
18 party to this action to produce any such information, such party shall immediately notify the parties
19 who originally produced and/or designated such information that a subpoena has been served or a
20 motion has been made in order to allow the parties who originally produced and/or designated such
21 information the opportunity to seek a protective order or oppose the motion or application. If, within
22 thirty (30) days after receiving notice of a subpoena seeking Confidential Information from a
23 receiving party, the party who originally produced and/or designated such information fails to move
24 for a protective order, the party subject to the subpoena may produce said information. In addition, if
25 a party is ordered to produce Confidential Information covered by this Protective Order, then notice
26 and, if available, a copy of the order compelling disclosure shall immediately be given the parties
27 who originally produced and/or designated such information. Nothing in this Protective Order shall
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1 be construed as requiring the party who is ordered to produce such Confidential Information to
2 challenge or appeal any order requiring the production of such information or to subject
3 himself/herself to any penalty for non-compliance with any legal process or seek any relief from the
4 Court.

5 15. **No Effect on Other Rights.** This Protective Order shall in no way abrogate or
6 diminish any pre-existing contractual, statutory, or other legal obligations or rights of any party with
7 respect to Confidential Information.

8 16. **Modification.** In the event any party hereto seeks a Court order to modify the terms
9 of this Protective Order, or seeks a protective order which incorporates the terms and conditions of
10 this Protective Order said party shall make such request by written stipulation or noticed motion to
11 all parties that must be served and filed in accordance with local court rules.

12 17. **Handling Upon Conclusion of Litigation.** All parties, counsel, and persons to whom
13 disclosure was made agree to return all Confidential Information to the designating party within
14 thirty (30) days of the conclusion of litigation between the parties, including final appellate action or
15 the expiration of time to appeal or seek further review. In addition, counsel shall certify in writing
16 that all such Confidential Information have been returned. Counsel for each party also shall contact
17 each person to whom that party has provided a copy of any Confidential Information and request the
18 documents be returned. In lieu of returning Confidential Information, the person or party in
19 possession of such information may elect to destroy it. If the person or party in possession of
20 Confidential Information elects to destroy it rather than return it, that person or party must notify the
21 designating party in writing of the destruction of the information within ninety (90) days of the
22 conclusion of litigation between the parties, including final appellate action or the expiration of time
23 to appeal or seek further review.

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18. **Survival of the Terms of this Protective Order.** Even after the termination of this litigation, the confidentiality obligations imposed by this Protective Order shall remain in effect until a Designating Party otherwise in writing or a court order otherwise directs.

Dated this 17th day of November, 2016.

Dated this 17th day of November, 2016.

AKERMAN LLP

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Dated this 17th day of November, 2016.

Dated this 17th day of November, 2016.

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ORDER

It is so ordered.

DATED this 17th day of _November_, 2016.


UNITED STATES MAGISTRATE JUDGE

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